

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
GREGORY SMITH,

Plaintiff,

-against-

WARDEN OF NORTH INFIRMARY COMMAND;
CITY OF NEW YORK; and SECURUS
TECHNOLOGIES CORRECTIONAL PHONE
SERVICES, INC.,

Defendants.

ANALISA TORRES, District Judge:

On August 3, 2018, Plaintiff, Gregory Smith, filed this action against Defendants, alleging that Defendants violated his constitutional rights by failing to timely attend to a broken phone casing in his prison facility by which he was injured. ECF No. 2. On December 21, 2018, Defendant Securus Technologies, Inc. filed a motion to dismiss the complaint for failure to state a claim. ECF No. 15. On December 26, 2018, Defendant City of New York filed a motion to dismiss the complaint for failure to state a claim. ECF No. 18. On June 13, 2019, the Honorable Ona T. Wang issued a report and recommendation, recommending that the motions be granted, that the claims against the remaining Defendant Warden of North Infirmary Command also be dismissed, and that the complaint be dismissed with prejudice. ECF No. 39.

The report and recommendation was sent to Plaintiff's last known address via regular mail, and was returned as undeliverable. *See* 7/2/2019 Docket Entry. No objections or requests for an extension have been filed and the deadline for objections has passed. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). A district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where no objections are made, a district court reviews a report and recommendation only for clear error. *See Folk v. Barton*, No. 15 Civ. 6443, 2017 WL 2191620, at *1 (S.D.N.Y. May 17, 2017). Clear error is found only when, upon review of the entire record, the Court is left with "the definite and firm conviction that a mistake has been committed." *Laster v. Mancini*, No. 07 Civ. 8265, 2013 WL 5405468, at *2 (S.D.N.Y. Sept. 25, 2013) (internal quotation marks and citation omitted). The Court has reviewed the thorough and well-reasoned report and found no clear error. Accordingly, the Court ADOPTS the report and recommendation in its entirety, GRANTS Defendants' motions to dismiss, and DISMISSES the complaint with prejudice.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 7/3/2019

18 Civ. 7018 (AT) (OTW)

ORDER

The Clerk of Court is directed to terminate the motions at ECF Nos. 15 & 18, mail a copy of this Order to Plaintiff *pro se*, and close the case.

SO ORDERED.

Dated: July 3, 2019
New York, New York



ANALISA TORRES
United States District Judge